

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

KEN D. ROE,

Plaintiff and Respondent,
Cross-Complainant

v.

XIAO JIE MA AKA JESSICA MA,

Defendant and Appellant,
Cross-Respondent.

A150320

(Alameda County
Super. Ct. No. HG08400273)

In 2011, the trial court entered a money judgment in favor of four plaintiffs, including Ken Roe, against Jessica Ma. In July 2016, after a judgment lien was placed on her real property in Alameda County, Ma delivered a cashier's check to Roe for the full amount of the monetary award owed to him. She did not pay the other three judgment creditors. Ma moved to compel Roe to enter an acknowledgement of full satisfaction of judgment but was denied relief. Over two months after accepting the cashier's check, Roe moved to recover the attorney's fees and costs arising from his efforts to enforce the judgment. He was granted some but not all of the requested attorney's fees.

Ma appeals from the two orders in propria persona, and Roe cross-appeals from the order discounting his attorney's fees. We affirm the trial court's order denying Ma's motion to compel entry of full satisfaction of judgment. We reverse the trial court's order granting Roe attorney's fees and dismiss Roe's cross-appeal as moot.

BACKGROUND

In July 2008, Roe and co-plaintiffs Ann Shin, Lin Ma, Leo Pang, and Godfrey Roxas sued Ma, Focus Management Group LLC, and Bill Chao alleging that they retained defendants to trade stocks for them, and sustained losses when defendants made a “high[] risk trade” that was contrary to their promised investment strategy. In February 2011, following a court trial in which none of the defendants appeared, the trial court entered judgment in favor of plaintiffs. The judgment reflects the following award to each plaintiff:

Ann Shin: \$24,650.00 principal plus \$3,578.44 interest

Lin Ma: \$15,561.80 principal plus \$2,259.10 interest

Leo Pang: \$12,750.00 principal plus \$1,850.88 interest

Ken D. Roe: \$63,750.00 principal plus \$9,254.44 interest

The court also awarded plaintiffs costs and attorney’s fees to be claimed by motion after entry of judgment. Ma appealed, and this court affirmed. (See *Shin v. Ma* (Oct. 4, 2011, A1131499 [non-pub. opn.])

After several years of nonpayment and unsuccessful efforts to enforce the judgment, Roe caused an Abstract of Judgment to be recorded in Alameda County. In June 2016, Roe filed a Motion to Sell Dwelling against Ma in a further effort to satisfy the judgment. Payment discussions between Roe and Ma followed. On July 27, 2016, Ma delivered a cashier’s check to Roe for \$113,187.00 with a handwritten note, “Case HG08400273 Full Judgment Payment to Ken Roe.” The amount, far more than the award to Roe, reflected the interest that had accrued since the entry of judgment in 2011. Ma made no payments to the other three judgment creditors.

The next day Ma demanded Roe file an acknowledgement of satisfaction of the judgment given “the full judgment amount of [the] Case . . . between Ken Roe and [Ma was] paid and the judgment ha[d] been satisfied.” Roe declined to do so and disputed whether Ma made a “full judgment payment” as noted. A few days later, Ma reissued her demand for an “acknowledgement of full satisfaction of the judgment between [Roe] and [her].” For weeks, the parties continued to confer on Ma’s demand. On August 26,

2016, Roe cashed the check. On September 8, 2016, he recorded in Alameda County a “Partial” Acknowledgement of Satisfaction of Judgment, noting he received \$113,187 from Ma.

On September 26, 2016, Ma, represented by counsel, moved to compel entry of full satisfaction of judgment. In her supporting declaration, Ma stated: “I attempted to refinance the loan on my real estate in order to pay off all judgment creditors. Due to plaintiff Roe’s refusal to comply with my demand that he file a full acknowledgement of satisfaction of judgment and remove all the liens and levies on my property, I was unable to obtain the necessary financing to pay off the three judgment creditors.” In his opposition, Roe did not deny that he was paid in full, and only disputed whether Ma’s payment to him “constitute[d] payment of the ‘total amount of judgment as entered’ as to the ‘entire case’ precluding [him] from collecti[ng] ATTORNEY FEES. . . .” On October 5, 2016, while Ma’s motion was pending, Roe moved for \$24,031.30 in post-judgment attorney’s fees and \$3,154.14 in costs related to his efforts to enforce the judgment.

The trial court denied Ma’s motion for full satisfaction of judgment, explaining, “[T]he judgment includes monetary awards to three other plaintiffs and it is also not disputed that they have not been paid yet. For this reason, Plaintiff Ken Roe was not required to file an acknowledgement of satisfaction of judgment.” The court granted Roe’s motion for attorney’s fees and costs in part and denied it in part, ordering payment of only \$13,511 in attorney’s fees and no costs. Ma now appeals both orders, and Roe cross-appeals the order granting him only \$13,511 in attorney’s fees.

DISCUSSION

Standard of Review

We review de novo the trial court’s interpretation of the applicable statutes and apply the substantial evidence standard when we review the court’s factual findings. (*Jhaveri v. Teitelbaum* (2009) 176 Cal.App.4th 740, 748-749.) The ordinary standard of review for a motion for attorney’s fees is abuse of discretion. (*Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1175.)

Satisfaction of Judgment

Ma argues the trial court's conclusion that Roe was not required to acknowledge full satisfaction of judgment based on the three outstanding judgment creditors was erroneous. Because there was no dispute she paid the full amount she owed Roe, Ma contends Roe was obligated to acknowledge full satisfaction of the judgment pursuant to Code of Civil Procedure section 724.050. Because of Roe's improper refusal, Ma argues her request for damages against Roe should have been granted. We cannot agree.

California's Enforcement of Judgment Law ("EJL"), a comprehensive scheme governing the enforcement of civil judgments, is contained in Title 9 of Part 2 of the Code of Civil Procedure, sections 680.010 to 724.60.¹ (*California Coastal Com. v. Allen* (2008) 167 Cal.App.4th 322, 326.) Section 724.010, subdivision (a) provides: "A money judgment may be satisfied by payment of the full amount required to satisfy the judgment or by acceptance by the judgment creditor of a lesser sum in full satisfaction of the judgment." (§ 724.010, subd. (a).) Under section 724.050, once a judgment has been satisfied, the judgment debtor may demand in writing that the judgment creditor "[f]ile an acknowledgment of satisfaction of judgment with the court," and/or "[e]xecute, acknowledge, and deliver an acknowledgment of satisfaction of judgment to the person who made the demand." (§ 724.050, subd. (a).) If the judgment creditor fails to comply within 15 days of the demand, the judgment debtor "may apply to the court on noticed motion for an order requiring the judgment creditor to comply with the demand." (§ 724.050, subd. (d).) "If the judgment has been satisfied and the judgment creditor fails without just cause to comply with the demand within the time allowed, the judgment creditor is liable for all damages sustained by reason of such failure" (§ 724.050, subd. (e).)

Here, the record shows the court issued a single judgment containing separate monetary awards to four individual plaintiffs and that an abstract of judgment was recorded against Ma in Alameda County to assist enforcement of that judgment. Apart

¹ All statutory references are to the Code of Civil Procedure.

from the attorney's fees which remain in dispute between Roe and Ma (and are discussed below), there is no disagreement that Ma paid Roe the full amount she owed him pursuant to the judgment. The court's judgment awarded Roe \$63,750.00 in principal plus \$9,254.44 in interest for a sum total of \$73,004.44. Ma paid Roe \$113,187, reflecting the amount of the award plus additional accrued interest since the judgment was filed in February 2011. Roe did not deny he was paid in full. Even Roe's counsel, in a declaration supporting Roe's attorney's fees motion, said: "Ma paid the Judgment in favor of Judgment Creditor [Roe], in full, with accrued interest on July 27, 2016." Nor is there any disagreement that the three other judgment creditors (Shin, Lin Ma, and Pang) have not been paid. There is also no evidence that the three outstanding judgment creditors intend to release Ma from her obligation. In fact, communications between Ma and their counsel indicate they expect to be paid what they are owed.

In these circumstances, Roe was not obligated to acknowledge full satisfaction of judgment under section 724.050, even though Ma satisfied the amount owed to him in full. The most Ma could expect was a partial satisfaction of the judgment under section 724.110 for the amount owed Roe.

The recording of the abstract of judgment created a lien against any property held in Ma's name in Alameda County. (See § 697.310, subd. (a).) The lien secured the debt owed to each of the four judgment creditors and gave each of them right to be paid from the proceeds of any sale of Ma's real property in the county. (See *Federal Deposit Ins. Corp. v. Charlton* (1993) 17 Cal.App.4th 1066, 1070 (*Federal Deposit*).) Recording an acknowledgement of satisfaction of judgment would have "extinguished as a matter of record" the judgment lien. (See § 697.400, subd. (a); *Federal Deposit, supra*, 17 Cal.App.4th at p. 1070 [noting an abstract of judgment "by statute, can be extinguished *only* by the recording of an acknowledgement of satisfaction of the underlying judgment or by the judgment creditor's release of the lien" and that "[t]here is no statutory procedure for 'expunging' an abstract of judgment"].) Thus, recording an acknowledgement that Ma had fully satisfied the judgment would have extinguished the judgment lien to the prejudice of the three remaining judgment creditors who still had not

been paid and could rightly rely on the judgment lien to enforce judgment. In these circumstances, Roe was not in a position to acknowledge full satisfaction of the judgment.

We recognize that Ma claims denying her motion to satisfy the judgment presents her with a conundrum given her view that the satisfaction would allow her to remove the judgment lien from her property so she could refinance it to pay off the remaining judgment creditors. We express no view on Ma's claim. Whatever its merits, it is clear that on the issue that is before us—whether the trial court erroneously denied her motion to require full satisfaction of judgment—the trial court did not err. A full satisfaction would have compromised the interests of the three remaining judgment creditors.

Attorney's Fees

Ma also argues the trial court erred in granting Roe post-judgment attorney's fees because Roe's motion for fees was untimely. According to Ma, "the time for Roe to make any motion for attorneys' fees [was] cut off on July 27, 2016." the day she delivered Roe the \$113,187 check. We agree.

Section 685.040 entitles a judgment creditor to reasonable and necessary costs of enforcing a judgment. (§ 685.040.) Under section 685.040, attorney's fees may be recovered to the extent otherwise authorized by contract, statute, or law. (§ 685.040; *Lucky United Properties Investment, Inc. v. Lee* (2010) 185 Cal.App.4th 125, 140 (*Lucky United*).) Section 685.080 expressly requires that a judgment creditor's motion for post-judgment attorney's fees be made before the judgment is fully satisfied. That section provides: "The judgment creditor may claim costs authorized by Section 685.040 by noticed motion. The motion shall be made before the judgment is satisfied in full, but not later than two years after the costs have been incurred." (§ 685.080, subd. (a).)

Gray1 CPB, LLC v. SCC Acquisitions, Inc. (2015) 233 Cal.App.4th 882 (*Gray1*), is instructive. There, in 2010, Gray1 obtained an approximately \$9 million judgment against the defendants. (*Id.* at p. 887.) The judgment also provided for attorney's fees and costs to be established by a cost bill or motion. (*Id.* at p. 888.) The defendants made no payments on the judgment until June 8, 2012, when Gray1 was hand-delivered a check

for almost \$13 million covering the judgment and accumulated interest. (*Id.* at p. 888.) Twelve days after receiving the cashier’s check, on June 20, 2012, Gray1 moved for postjudgment costs, including \$3.1 million in attorney’s fees allegedly incurred in attempting to enforce the judgment. (*Id.* at p. 888.) The trial court denied Gray1’s motion for post-judgment costs as untimely. (*Id.* at p. 889.) The court of appeal affirmed. (*Id.* at pp. 899.) To be timely, a motion for post-judgment attorney’s fees “must be made before the underlying judgment has been fully satisfied and within two years of the fees being incurred.” (*Id.* at p. 891.) It explained: “ ‘[T]he statutory purpose of requiring that the motion for enforcement costs be brought “before the judgment is satisfied in full” (§ 685.080, subd. (a)) is to avoid a situation where a judgment debtor has paid off the entirety of what he [justifiably] believes to be his obligation in the entire case, only to be confronted later with a motion for yet more fees.’ [Citation.]” (*Id.* at p. 891.) “The judgment was fully satisfied when Gray1 accepted the cashier’s check,” which “constituted full satisfaction of the judgment.” (*Id.* at pp. 894-895.) Thus, it was untimely. (*Id.* at p. 895.)

So, too, here. There is no dispute that Ma’s cashier’s check was delivered to Roe on July 27, 2016. Roe’s counsel acknowledged that Ma “paid the judgment in favor of Judgement Creditor [Roe], in full, with accrued interest on July 27, 2016.” That payment was not rejected by Roe, who took it, held it, and then proceeded to cash it on August 26, 2016. The judgment Ma owed Roe was fully satisfied when Roe accepted the cashier’s check on July 27, 2016. (See *Gray1, supra*, 233 Cal.App.4th at pp. 894-895.) Roe did not file his motion for attorney’s fees until October 5, 2016, approximately 70 days after the judgment was satisfied. Under section 685.040, this was too late. (See § 685.040, subd. (a).) The trial court’s order allowing such fees was therefore an abuse of discretion.

Roe argues that he was entitled to seek attorney’s fees against Ma “any time before [Ma] satisfie[d] in full the total amount of the judgment as to all four Judgment Creditors.” (Underlines in original.) The trial court seemed to agree with Roe. It cited *Lucky United, supra*, 185 Cal.App.4th 125, which stated “the statutory purpose of requiring that the motion for enforcement costs be brought ‘before the judgment is

satisfied in full’ . . . is to avoid a situation where a judgment debtor has paid off the entirety of what he believes to be his obligation in the entire case, only to be confronted later with a motion for yet more fees.” According to the trial, with three of the four judgment creditors since unpaid, “Ma ha[d] not paid off the entirety of her obligation in the entire case.”

We disagree that outstanding amounts separately owed to co-plaintiffs allowed Roe to circumvent the deadlines imposed by section 685.040. First, *Lucky United* involved only a single judgment creditor seeking post-judgment attorney’s fees. (See *Lucky United, supra*, 185 Cal.App.4th at p. 142.) *Lucky United* never considered the requirement that the motion for fees be brought “before the judgment is satisfied in full” in the context of a case involving multiple judgment creditors, where some but not all have been fully paid. Likewise, the statement in *Lucky United* regarding a judgment debtor’s “obligation in the entire case” was not material to the decision. The statement is thus of no precedential value. (*Childers v. Childers* (1946) 74 Cal.App.2d 56, 61 [“[A] decision is not authority for what is said in the opinion but only for the points actually involved and actually decided”] italics omitted.)

Moreover, our decision better fulfills the policy underlying section 685.080’s time limit in order to prevent unfair surprise to the judgment debtor, as expressed in *Lucky United* and in *GrayI*. Ma delivered the \$113,187 cashier’s check to Roe, with the understanding that it resolved her obligation to Roe in full. When Roe accepted it, he effectively confirmed her obligation had been satisfied. Allowing him to prolong their dispute with his motion for attorney’s fees more than two months later would unravel the finality and certainty conferred by his acceptance of the payment. As explained in *GrayI*, “If a judgment creditor is presented with a cashier’s check for the amount of the judgment plus accrued interest and awarded costs, but the judgment creditor wants to seek additional attorney fees incurred in enforcing its judgment, the judgment creditor ‘retains, at the least, the option of rejecting the certified check and filing the motion or memorandum for enforcement costs and fees.’ ” (*GrayI, supra*, 233 Cal.App.4th at p. 895.) Since Roe did not reject the payment, he could no longer move for post-judgment

fees. He cannot resurrect his ability to seek such fees by relying on the status of the three unsatisfied, unrelated creditors on the judgment.

Roe also contends that he was entitled to an award of fees for enforcement of the judgment, and he invokes statutes and case law supporting that right. However, entitlement is beside the point. We conclude only Roe's request for such attorney's fees, which came over two months after Ma had satisfied the judgment in his favor, was untimely.

Cross-Appeal

Roe's sole contention in his cross-appeal is that the trial court erred in discounting his request for attorney's fees. In view of our decision above concluding Roe's motion for attorney's fees was untimely, it is unnecessary to address the merits of Roe's cross-appeal. (See *Hull v. Cason* (1981) 114 Cal.App.3d 344, 375.)

DISPOSITION

The order denying Ma's motion for a full satisfaction of judgment is affirmed. The post-judgment order awarding Roe attorney's fees is reversed, and the case is remanded to the trial court with instructions to vacate its order granting in part Roe's motion for attorney's fees and enter a new order denying the motion. Roe's cross-appeal is dismissed as moot. The parties are to bear their own costs on appeal.

Siggins, P.J.

We concur:

Jenkins, J.

Ross, J.^{*}

^{*} Judge of the San Francisco Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.